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2d Session }

SENATE

{ REPORT
No. 91-880

BEVERLY MEDLOCK AND RUTH LEE MEDLOCK

MAY 19, 1970.—Ordered to be printed

Mr. BURDICK, from the Committee on the Judiciary,
submitted the following

REPORT

[To accompany H.R. 3920]

The Committee on the Judiciary, to which was referred to bill (H.R. 3920) for the relief of Beverly Medlock and Ruth Lee Medlock, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to provide that the Administrator of Veterans' Affairs shall pay, out of current appropriations for the payment of pension, to Beverly Medlock and Ruth Lee Medlock, the children of Willie Lee Medlock (VA No. XC 11 649 545), in lump sum, the amounts which would have been payable on behalf of each respectively as pension from May 23, 1960, to the date claim therefore was filed for the said Ruth Lee Medlock (November 1, 1967) if application therefore had been appropriately made under laws administered by the Veterans' Administration.

STATEMENT

The Veterans' Administration in the report to the House Judiciary Committee dated August 5, 1968, on a previous bill recommended the favorable consideration of the bill.

The Veterans' Administration report states that Willie Lee Medlock, the father of the two children named in the bill, was an honorably discharged veteran of World War II who died in Florida on

May 22, 1960, of a non-service-connected cause. An application for monetary death benefits on behalf of the veteran's child, Ruth Lee Medlock, was filed by her paternal grandmother on November 1, 1967.

That application indicated that the other child was not attending school at that time. The grandmother stated that the veteran had left the children in her custody in 1950 and that she adopted them in 1959. The reason that application for benefits was not filed until 1967 was that the veteran had disappeared after placing the children in the grandmother's custody. As noted in the Veterans' Administration report, the grandmother had no knowledge of the veteran's death in 1960 until July of 1966. Apparently she then secured the necessary evidence of the veteran's death and shortly thereafter filed the application referred to in the departmental report.

Veterans' Administration death pension is not payable on account of a child over 18 years of age unless the child became permanently incapable of self-support prior to that age, or is pursuing a course of instruction at an approved educational institution. Consequently, death pension based on the November 1, 1967, application was awarded, effective the same date, only on behalf of Ruth Lee, in the amount of \$40 per month. Payments of that benefit continued through June of 1968, when the child was scheduled to complete her high school education.

There is no limitation on the time in which application may be made for death pension. The law provides a limitation, however, regarding payment of the benefit for a period prior to the date of application. Retroactive payment is authorized, from the month of the veteran's death, if application is received within 1 year from the date of death. Otherwise the benefit is payable only from the date of receipt of the application. (38 U.S.C. 3010 (a) and (d).)

Since the application in this case was not filed within a year after the veteran's death, there presently exists no authority for payment of death pension for any period prior to November 1, 1967, when the application was actually received.

Under the law in effect until July 1, 1960, relating to death pension based on service in World War II, it was required, in addition to 90 days of wartime service, that the veteran at death have had a service-connected disability for which compensation would have been payable if 10 percent or more in degree disabling. Effective July 1, 1960, the law was liberalized to authorize pension based upon 90 days of active service (or less if discharged for disability) without regard to existence of service-connected disability at death.

The Veterans' Administration report states that it is acknowledged that the bill is intended to authorize payment of death pension from the date an award would have been effective under controlling law if an application on behalf of the two children had been filed within 1 year after the veteran's death. It is noted that the earliest possible date of an award based on the death of Willie Lee Medlock was July 1, 1960. This is because he did not have a service-connected disability. This bill would make it possible to pay the benefits these children would have been entitled to had the application been filed within 1 year after May 22, 1960, the date of the veteran's death. The actual amount of retroactive death pension would depend upon a determination by the Veterans' Administration as to whether the children met all of the requirements of eligibility for the period in question. The

Veterans' Administration has stated that if both children met the income and net worth limitations in the law during the period and if the eldest child, Beverly, did not attend school after she became 18, the aggregate amount payable under the bill would be \$4,006.99. This amount consists of an estimated figure of \$1,372.97 for benefits to Beverly Medlock and \$2,634.02 for Ruth Lee Medlock.

The report of the Veterans' Administration recognizes the equities in this situation. It further notes that the strict provisions of the law bar any administrative relief for the two children. It is therefore obvious that the only recourse for them is to appeal to the Congress for relief. With reference to legislative relief in this instance, the Veterans' Administration stated:

The current law is such that the responsible Veterans' Administration employees had no choice but doing what they did in assigning the effective date of the death pension award. We feel that the law is too rigid in cases such as this. We plan to study the desirability of legislation that would allow more equitable determinations under these and similar circumstances. Favorable consideration of H.R. 15908 is accordingly recommended.

In view of the recommendation of the Veterans' Administration and the particular circumstances of this case, the committee recommends that the bill be considered favorably.

Attached hereto and made a part hereof is the report submitted by the Veterans' Administration to the House Judiciary Committee on a similar bill in the 90th Congress.

VETERANS' ADMINISTRATION,
OFFICE OF THE ADMINISTRATOR OF VETERANS' AFFAIRS,
Washington, D.C., August 5, 1968.

HON. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,
House of Representatives,
Washington, D.C.*

DEAR MR. CHAIRMAN: We are pleased to respond to your request for a report on H.R. 15908, 90th Congress, a bill for the relief of Beverly Medlock and Ruth Lee Medlock.

The bill proposes that the Administrator of Veterans' Affairs shall pay, out of current appropriations for the payment of pension, to Beverly Medlock and Ruth Lee Medlock, the children of Willie Lee Medlock (VA No. XC 11 649 545), in lump sum, the amounts which would have been payable on behalf of each respectively as pension from May 23, 1960, to the date claim therefor was filed for the said Ruth Lee Medlock (Nov. 1, 1967) if application therefor had been appropriately made under laws administered by the Veterans' Administration.

The veteran, Willie Lee Medlock, an honorably discharged veteran of World War II, died in Florida of a non-service-connected cause on May 22, 1960. On November 1, 1967, application for monetary death benefits on behalf of the veteran's child, Ruth Lee (born April 13, 1949) was filed by her paternal grandmother, Ruth L. Medlock. The application reflected that the other child of the veteran, Beverly (born

January 27, 1947), was not attending school. The grandmother stated that the veteran had left the children in her custody in 1950, and that she adopted them in 1959. Further, that the reason application for benefits was not filed until 1967 was that the veteran had disappeared after placing the children in her custody, that she had no knowledge of his 1960 death until July 1966, and that the evidence of death she then sought had been received just prior to filing of application.

Evidence of record establishes that the marriage of the veteran and the children's mother, Elizabeth R. Medlock, was dissolved by final decree of divorce on September 22, 1958.

Veterans' Administration death pension is not payable on account of a child over 18 years of age unless the child became permanently incapable of self-support prior to that age, or is pursuing a course of instruction at an approved educational institution. Consequently, death pension based on the November 1, 1967, application was awarded, effective the same date, only on behalf of Ruth Lee, in the amount of \$40 per month. Payments of that benefit continued through June of 1968, when the child was scheduled to complete her high school education.

There is no limitation on the time in which application may be made for death pension. The law provides a limitation, however, regarding payment of the benefit for a period prior to the date of application. Retroactive payment is authorized, from the month of the veteran's death, if application is received within 1 year from the date of death. Otherwise the benefit is payable only from the date of receipt of the application. (38 U.S.C. 3010 (a) and (d).)

Since the application in this case was not filed within a year after the veteran's death, there presently exists no authority for payment of death pension for any period prior to November 1, 1967, when the application was actually received.

Under the law in effect until July 1, 1960, relating to death pension based on service in World War II, it was required, in addition to 90 days of wartime service, that the veteran at death have had a service-connected disability for which compensation would have been payable if 10 percent or more in degree disabling. Effective July 1, 1960, the law was liberalized to authorize pension based upon 90 days of active service (or less if discharged for disability) without regard to existence of service-connected disability at death.

It is assumed that the bill is intended to authorize payment of death pension for Beverly and Ruth Lee from the date an award would have been effective under controlling law if an application on behalf of the two children had been filed within 1 year after the veteran's death. Inasmuch as this World War II veteran did not have a service-connected disability, the earliest possible date of an award of pension based on his death was July 1, 1960.

Enactment of H.R. 15908 would amount to a presumption, contrary to fact, that an application for benefits for the two children was filed within 1 year after May 22, 1960. The amount of retroactive death pension to be paid would depend upon a determination by the Veterans' Administration as to whether the children met all other requirements of eligibility throughout the period from July 1, 1960, through October 31, 1967.

The necessary evidence for such a determination is not presently of record, so we are unable to furnish a firm estimate of the cost of the bill if enacted. For the committee's information, however, it appears that if both children met the income and net worth limitations of the law during the period, and if Beverly did not attend school after she became 18, the aggregate amount payable under the bill would be \$4,006.99. That figure consists of an estimated figure of \$1,372.97 for benefits to Beverly and \$2,634.02 for Ruth Lee.

The current law is such that the responsible Veterans' Administration employees had no choice but doing what they did in assigning the effective date of the death pension award. We feel that the law is too rigid in cases such as this. We plan to study the desirability of legislation that would allow more equitable determinations under these and similar circumstances. Favorable consideration of H.R. 15908 is accordingly recommended.

Advice has been received from the Bureau of the Budget that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely,

W. J. DRIVER, *Administrator.*

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